

ROBERT C. SCHUBERT (SBN 62684)  
WILLEM F. JONCKHEER (SBN 178748)  
SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
Telephone: (415) 788-4220  
rschubert@schubertlawfirm.com  
wjonckheer@schubertlawfirm.com

BRIAN J. WANCA (admitted *pro hac vice*)  
GLENN L. HARA (admitted *pro hac vice*)  
RYAN M. KELLY (admitted *pro hac vice*)  
ROSS M. GOOD (admitted *pro hac vice*)  
ANDERSON & WANCA  
3701 Algonquin Road, Suite 500  
Rolling Meadows, IL 60008  
Telephone: (847) 368-1500  
bwanca@andersonwanca.com  
ghara@andersonwanca.com  
rkelly@andersonwanca.com  
rgood@andersonwanca.com

Attorneys for Plaintiffs

[Additional Counsel on Signature Page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

TRUE HEALTH CHIROPRACTIC INC., and  
MCLAUGHLIN CHIROPRACTIC  
ASSOCIATES, INC., individually and as the  
representatives of a class of similarly-situated  
persons,

Plaintiffs,

v.

MCKESSON CORPORATION,  
MCKESSON TECHNOLOGIES, INC.,  
and DOES 1-10,

Defendants.

Case No. 4:13-cv-02219-HSG (DMR)

**PLAINTIFFS' STATEMENT OF  
ELEMENTS OF LIABILITY FOR  
PLAINTIFFS' INDIVIDUAL TCPA  
CLAIMS**

Pretrial Conference: January 10, 2022  
Time: 10:00 a.m.  
Courtroom: 2, 4th Floor  
Judge: Haywood S. Gilliam, Jr.

1 In compliance with the Court's Order (Doc. 509), Plaintiffs McLaughlin Chiropractic  
 2 Associates, Inc. and True Health Chiropractic, Inc. state as follows:

3 There are three elements of liability for each of the Plaintiffs' individual claims under the  
 4 Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and a fourth element to  
 5 establish treble damages:

6 ELEMENT ONE: Plaintiffs have the burden to prove that each Defendant is a "sender" of  
 7 the Faxes<sup>1</sup> sent to Plaintiffs. A "sender" is defined as "the person or entity on whose behalf a  
 8 facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted  
 9 in the unsolicited advertisement." 47 C.F.R. § 64.1200(f)(11).

10 ELEMENT TWO: Plaintiffs have the burden to prove that the Faxes are "advertisements."  
 11 An "advertisement" is defined as "any material advertising the commercial availability or quality  
 12 of any property, goods, or services." 47 C.F.R. § 64.1200(f)(1); 47 U.S.C. § 227(a)(5).

13 ELEMENT THREE: Plaintiffs have the burden to prove that Defendant(s) sent the Faxes  
 14 to a "telephone facsimile machine" by the use of a "telephone facsimile machine, computer, or  
 15 other device." A "telephone facsimile machine" is defined as "equipment which has the capacity  
 16 (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that  
 17 signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic  
 18 signal received over a regular telephone line onto paper." 47 U.S.C. § 227(a)(3); 47 C.F.R.  
 19 § 64.1200(f)(14).

20 ELEMENT FOUR: Plaintiffs have the burden to prove that Defendant(s) "willfully or  
 21 knowingly" violated the TCPA. 47 U.S.C. § 227(b)(3)(C). A "willful" violation entails "not only  
 22 knowing violations of a standard, but reckless ones as well." *Safeco Ins. Co. of Am. v. Burr*, 551  
 23 U.S. 47, 56–57 (2007).

24  
 25 Dated: January 10, 2022

By: /s/ Ross M. Good  
 BRIAN J. WANCA (admitted *pro hac vice*)  
 RYAN M. KELLY (admitted *pro hac vice*)

26  
 27  
 28 <sup>1</sup> See Stipulation Regarding Named Plaintiffs' Individual Receipt of Faxes at Issue (Doc. 491) at 2.

1 GLENN L. HARA (admitted *pro hac vice*)

2 ROSS M. GOOD (admitted *pro hac vice*)

3 **ANDERSON + WANCA**

3701 Algonquin Road, Suite 500

Rolling Meadows, IL 60008

Telephone: 847-368-1500

Fax: 847-368-1501

bwanca@andersonwanca.com

rkelly@andersonwanca.com

ghara@andersonwanca.com

rgood@andersonwanca.com

8 ROBERT C. SCHUBERT

9 WILLEM F. JONCKHEER

**SCHUBERT JONCKHEER & KOLBE LLP**

Three Embarcadero Center, Suite 1650

San Francisco, CA 94111

Telephone: 415-788-4220

Fax: 415-788-0161

rschubert@schubertlawfirm.com

wjonckheer@schubertlawfirm.com

14 GEORGE D. JONSON (admitted *pro hac vice*)

15 MATTHEW E. STUBBS (admitted *pro hac vice*)

**MONTGOMERY JONSON LLP**

600 Vine Street, Suite 2650

Cincinnati, OH 45202

Telephone: 513-241-4722

Fax: 513-768-9220

gjonson@mojolaw.com

mstubbs@mojolaw.com

*Attorneys for Plaintiffs*